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YEO ANN KIAT & ORS v. HONG LEONG BANK BHD & ANOR

COURT OF APPEAL, PUTRAJAYA
MOHD ZAWAWI SALLEH JCA
VERNON ONG LAM KIAT JCA
B ABDUL RAHMAN SEBLI JCA
[CIVIL APPEAL NO: W-02(IM)-1864-11-2015]
22 MARCH 2016

C ***COMPANY LAW:*** *Liquidators – Application for removal – Duty of liquidators to complete liquidation process efficiently – Inaction/delay on part of liquidators to complete liquidation process – Whether liquidators deviated from primary duty to wind-up business of company – Whether application for removal of liquidator should be allowed*

D Jade Realty was the registered owner of lands held under four master titles ('the lands'). The lands were charged to Hong Leong Finance Bhd ('petitioner') for a bridging finance. Jade Realty intended to develop the lands into a property development known as the Genting Valley Countryside Living Resort ('the project'). The project comprised, *inter alia*, 655 bungalow plots of land. Between 2000 and 2004, Jade Realty sold 627 out of 655 E bungalow plots of land under sale and purchase agreements to various purchasers, *inter alia*, to the appellants. The project was abandoned sometime in 2004 and a winding up petition was presented against Jade Realty by the petitioner on 20 June 2006. Subsequently, an order for the winding up of Jade Realty was made and Ler Cheng Chye and Lum Tuck Cheong were F appointed as liquidators ('liquidators'). Before the High Court, the appellants, amongst others, argued that there was inaction/delay of almost eight years on the part of the liquidators to complete the liquidation process of Jade Realty. As such, the appellants contended that such circumstances warranted the removal of the liquidators. The High Court Judge nevertheless G found that the delay was justified on the grounds, *inter alia*, that the liquidators had the mandate of the petitioner to revive the project and dismissed the appellant's application. Hence the present appeal.

Held (allowing appeal with costs)
Per Vernon Ong Lam Kiat JCA delivering the judgment of the court:

H **(1)** The liquidators deviated from their primary duty *ie*, to wind up the business of Jade Realty. Instead, they went into the business of attempting to revive the abandoned project over a period of eight years. It is not the business of the liquidators in a compulsory winding up to engage in activities which runs counter to the objective of winding up I the affairs of the company leading to its ultimate dissolution. (para 33)

(2) After a lapse of eight years, the liquidators still have not been able to complete the compulsory liquidation. The process of liquidation must be carried out by the liquidators with due despatch and diligence. The

lapse of eight years in compulsory liquidation is inordinate and unreasonable. The liquidators should be forthwith removed and a new liquidator be appointed. (paras 34 & 35)

Bahasa Malaysia *Headnotes*

Jade Realty adalah pemilik tanah berdaftar yang dipegang bawah empat hak milik induk ('tanah-tanah'). Tanah-tanah dipajakkan pada Hong Leong Finance Bhd ('pempetisyen') untuk mendapatkan kemudahan kewangan. Jade Realty berniat membangunkan tanah-tanah menjadi pembangunan hartanah yang dikenali sebagai Genting Valley Countryside Living Resort ('projek'). Projek tersebut mengandungi, antara lain, 655 plot tanah banglo. Antara tahun 2000 dan 2004, Jade Realty menjual 627 daripada 655 plot tanah banglo di bawah perjanjian jual beli kepada pelbagai pembeli, antara lain, perayu. Projek tersebut diabaikan sekitar tahun 2004 dan petisyen penggulungan dikemukakan terhadap Jade Realty oleh pempetisyen pada 20 Jun 2006. Kemudian, perintah penggulungan Jade Realty dibuat dan Ler Cheng Chye dan Lum Tuck Cheong dilantik sebagai pelikuidasi ('pelikuidasi'). Di Mahkamah Tinggi, perayu, antara lain, menghujahkan bahawa terdapat kelewatan/kegagalan bertindak selama hampir lapan tahun oleh pelikuidasi untuk menyelesaikan proses penggulungan Jade Realty. Oleh itu, perayu menghujahkan bahawa keadaan sedemikian mewajarkan penyingkiran pelikuidasi. Walau bagaimanapun, Hakim Mahkamah Tinggi mendapati bahawa kelewatan tersebut wajar atas alasan, antara lain, bahawa pelikuidasi memperoleh mandat pempetisyen untuk memulihkan projek tersebut dan menolak permohonan perayu. Oleh itu rayuan ini.

Diputuskan (membenarkan rayuan dengan kos)
Oleh Vernon Ong Lam Kiat HMR menyampaikan penghakiman mahkamah:

(1) Pelikuidasi menyimpang daripada tugas utama mereka iaitu untuk menggulung urusan Jade Realty. Sebaliknya, pelikuidasi campur tangan dalam urusan untuk cuba memulihkan projek yang diabaikan dalam tempoh lapan tahun. Bukanlah urusan pelikuidasi dalam penggulungan wajib untuk melibatkan diri dalam aktiviti-aktiviti yang bertentangan dengan objektif penggulungan hal ehwal syarikat yang membawa kepada penggulungan muktamad.

(2) Selepas lapan tahun, pelikuidasi masih belum dapat menyelesaikan penggulungan wajib. Proses penggulungan harus dilakukan oleh pelikuidasi dengan cepat dan tekun. Kelewatan selama lapan tahun dalam penggulungan wajib adalah melampau dan tidak munasabah. Pelikuidasi harus disingkirkan serta-merta dan seorang pelikuidasi baru dilantik.

Case(s) referred to:
Abric Project Management Sdn Bhd v. Palmshine Plaza Sdn Bhd & Anor [2007] 7 CLJ 516 HC ***(refd)***
AMP Enterprises Ltd v. Hoffman & Anor [2003] 1 BCLC 319 ***(refd)***
Bristol and West Building Society v. Mothew [1998] Ch 1 ***(refd)***

A *Chua Boon Chin v. JM McCormack & Ors [1978] 1 LNS 33 HC* ***(refd)***
Commissioner for Corporate Affairs v. Peter William Harvey [1980] VR 669 ***(refd)***
Domino Hire Pty Ltd v. Pioneer Park (2003) 21 ACLC 1,330 ***(refd)***
Gan Yook Chin & Anor v. Lee Ing Chin & Ors [2004] 4 CLJ 309 FC ***(refd)***
Goh Siew Koon @ Eng Sing Kuan & Ors v. Lim Jit Kim @ Lim Tian Jee & Ors [2015] 1 LNS 1222 CA ***(refd)***
B *In re Rubber And Produce Investment Trust [1915] 1 Ch D 382* ***(refd)***
Lee Ing Chin & Ors v. Gan Yook Chin & Anor [2003] 2 CLJ 19 CA ***(refd)***
Malayan Banking Bhd v. Lim Poh Ho & Anor [1997] 2 CLJ 516 CA ***(refd)***
Ng Yok Gee & Anor v. CTI Leather Sdn Bhd; Metro Brilliant Sdn Bhd & Ors (Interveners) [2006] 3 CLJ 360 HC ***(refd)***
Re Adam Eyton, Limited Ex p Charlesworth [1887] 36 Ch D 299 ***(refd)***
C *Re Corbenstoke Ltd (No 2) [1990] BCLC 60* ***(refd)***
Re Keypak Homecare Ltd [1987] BCLC 409 ***(refd)***
Sanyan Sdn Bhd v. Sanyan Lumber Sdn Bhd; Dato' Ting Check Sii (Applicant) [2013] 1 LNS 1364 HC ***(refd)***
Wong Sin Fan & Ors v. Ng Peak Yam & Anor [2013] 3 CLJ 17 FC ***(refd)***

D **Legislation referred to:**
Companies (Winding-up) Rules 1972, rr. 91, 106
Companies Act 1965, ss. 227(1), 232(1), 236(2)(i), (3), 237(1), (2), (4), 263(2), 279, 287, 308

Other source(s) referred to:
E Walter Woon, *Company Law*, 2nd edn, p 706

For the appellants - Harpal Singh Grewal, Mark Ho, S Sumathi, Rewny Rao & Nurul Najwa; M/s Hakem Arabi & Assocs
For the 1st respondent - Tan Gian Chung & Tan Shu Shuen; M/s Shook Lin & Bok
For the 2nd respondent - Izabella De Silva & Chow Yee Wan; M/s Iza Ng Yeoh & Kit

F *[Editor's note: For the High Court judgment, please see Hong Leong Bank Bhd v. Jade San Realty Sdn Bhd [2007] 1 LNS 307 (overruled).]*

Reported by Sandra Gabriel

G

JUDGMENT

Vernon Ong Lam Kiat JCA:

Introduction

[1] This is an appeal against the decision of the High Court sitting at Kuala
H Lumpur dismissing the appellants' application to remove Ler Cheng Chye and Lum Tuck Cheong as liquidators of Jade Realty Sdn Bhd (the second respondent) and for the appointment of Wong Chong Yong as the liquidator of Jade Realty and other consequential relief.

The Salient Facts

I **[2]** Jade Realty was the registered owner of land held under four master titles located in Mukim Batang Kali, Daerah Ulu Selangor, Negeri Selangor measuring approximately 742 acres ('the lands') under four master titles. The lands were charged to Hong Leong Finance Berhad for bridging finance.

[3] Jade Realty intended to develop the lands into a property development known as the Genting Valley Countryside Living Resort ('the project'). The project would comprise of residential and commercial projects involving (i) 665 bungalow lots separated into five phases (phases 1, 2, 2A, 2B), (ii) low and medium cost apartments; (iii) a proposed retirement village resort; (iv) a proposed executive holiday resort; (v) clubhouse; (vi) pitch and putt golf course; (vii) a proposed horse camp; as well as (viii) a commercial centre spanning over 767 acres of freehold land.

[4] The development commenced on part of two out of the four master titles and was planned for subdivision into 655 plots of land divided into phases 1, 2, 2A, 2B and 3 with approval for bungalow lots.

[5] Between 2000 and 2004, Jade Realty sold 627 out of 655 bungalow plots of land under sale and purchase agreements to various purchasers, *inter alia*, to the appellants herein. Pursuant thereto, Jade Realty was to construct and build infrastructure works and deliver vacant possession of the plots. Jade Realty was also to apply for conversion from agricultural to residential use as well as subdivide the land into individual titles in respect of each plot of land.

[6] The project was abandoned sometime in 2004. Only phase 1 of the project was completed and vacant possession was handed over to the purchasers of the bungalow lots in phase 1.

[7] A winding up petition was presented by Hong Leong Finance Bhd against Jade Realty on 20 June 2006. Subsequently on 24 January 2007, an order for the winding up of Jade Realty was made and Ler Cheng Chye and Lum Tuck Cheong were appointed as liquidators.

[8] The appellants are also members of the Genting Valley Purchasers Group ('GVPG'), an informal group consisting of purchasers in all five phases in the project. GVPG was initially formed by and consisted of purchasers in phase 1 only. However, its membership was subsequently opened to all purchasers in the other four phases with the objective of finding and exploring all avenues and/or options to obtain legal titles to their respective bungalow lots as well as the revival of the project with no additional and/or minimal top-up.

Decision Of The High Court

[9] The learned judge recognised the appellant's main grievance which was described in para. 3 of her judgment as follows:

> In essence the Applicants (appellants) are unhappy with the Liquidators and contend the Liquidators have failed to protect their interest and rights as purchasers of the Project and are unjustly prolonging the Respondent's (Jade Realty's) liquidation process to the detriment of the Plaintiffs (appellants) through alleged misconduct and/or improper actions. (parenthesis added)

[10] The learned judge's findings on the five main issues raised by the appellants is summarised below:

(a) Statutory and fiduciary duty

(i) the complaint that the proof of debt was not called within the prescribed time is without merit because no time is prescribed in r. 91 of the Companies (Winding-up) Rules 1972 (CWU Rules 1972) for the calling of proof of debt;

(ii) the complaint that the first creditor's meeting was not held within the prescribed time under r. 106 of the CWU Rules 1972 is without merit as r. 106 only applies to the official receiver who is appointed as liquidator under s. 227(1) of the Companies Act 1965 (CA 1965) (*Sanyan Sdn Bhd v. Sanyan Lumber Sdn Bhd; Dato' Ting Check Sii (Applicant)* [2013] 1 LNS 1364; [2013] 3 AMR 727); and

(iii) there is no merit in the complaint that the liquidators' independence is compromised by the chargee bank (petitioner) in agreeing to allow the sale of the charged land. The liquidators are empowered under s. 263(2) of the CA 1965 to sell the charged land but consent of the petitioner is required as the chargee bank being a secured creditor would have priority over the proceeds of sale of the charged land (*Abric Project Management Sdn Bhd v. Palmshine Plaza Sdn Bhd & Anor* [2007] 7 CLJ 516).

(b) Duty of skill, care and diligence

(i) there is no merit in the complaint that tender for sale was made just four months after the liquidators' appointment without first ascertaining Jade Realty's financial position and without engaging with the appellants;

(ii) section 236(2) of the CA 1965 gives the liquidators the right to sell Jade Realty's assets. There is no condition imposed to ascertain debts and liabilities or to consult the appellants (*Abric* (*supra*); *Domino Hire Pty Ltd v. Pioneer Park* (2003) 21 ACLC 1,330);

(iii) there is no statutory requirement that the liquidators shall produce a valuation report to the appellants. Section 237(4) of the CA 1965 gives the liquidators discretion in management of affairs and property of Jade Realty; and

(iv) the sale of the two master titles charged to the petitioner was based on the best price obtained after three advertisements published in local newspapers in three languages (*Malayan Banking Bhd v. Lim Poh Ho & Anor* [1997] 2 CLJ 516).

(c) Duty to secure, preserve and realise the company's assets for the benefit of all its creditors

(i) the project was abandoned in 2004 and the liquidators took possession of the land in 2007. There were no funds and the liquidators are prohibited from incurring any expenses in the winding up unless there are available assets (s. 287 of the CA 1965); and

(ii) there is no prejudice to the purchasers' interest in their bungalow lots by the sale of part of the land forming part of the project. The purchasers' bungalow lots are situated on part of the two master titles. The rest of the unsold portion of the land in the two master titles belonged to Jade Realty.

(d) Lack of probity and *mala fide*

(i) despite the petitioner having given about six months for the liquidators to finalise the sale of the land to the 'white knight' proposed by GVPG no agreement was concluded;

(ii) the sale of the land to KPSB was pursuant to the terms contained in the tender documents; and

(iii) the petitioner was not involved in the sale of the land as the vendors were the liquidators.

(e) Best interest and advantage of all creditors and interested parties

(i) there is no obligation for the liquidators to update the appellants of every step they take in performing their statutory duties (s. 237(4) of the CA 1965);

(ii) the allegation that the liquidators delayed the winding up process for eight years is not sustainable. GVPG took five years from 2008 to 2013 with the consent of the petitioner to try to rehabilitate the project with three different white knights;

(iii) when the liquidators had the mandate of the petitioner to revive the project a meeting was held in December 2013 to discuss the s. 176 scheme with the purchasers. But GVPG proposed another white knight in 2014 and in June 2014 filed the application before the High Court. Consequently, the liquidators could not proceed as they have to await the decision of the High Court.

Submission Of Parties

[11] Before us, learned counsel for the appellants argued that there was inaction on the part of the liquidators because nothing happened for eight years. The learned judge did not address the grievances of the appellants in the context of the long delay occasioned by the liquidators' failure to

A complete the liquidation process of Jade Realty. Learned counsel argued that the circumstances warrant the removal of the liquidators. In this regard, learned counsel alluded to the grievances which are in substance the five main issues dealt by the learned judge (see para. 9 above).

B **[12]** Learned counsel also submitted that there was no communication or cooperation between the liquidators and the purchasers and that the solution was for the appointment of a co-liquidator with the restricted duty of looking into the grievances of the purchasers.

C **[13]** In his written submission, learned counsel for the appellants also took the following points. First, the affidavits filed contained conflicting versions of the events that transpired over the years. The learned judge did not undertake a critical analysis of the affidavits and favoured the liquidators' version of events and concluded that the application ought to be dismissed (*Re Corbenstoke Ltd (No 2)* [1990] BCLC 60). The learned judge failed to consider the absence of any concrete proposals on the part of the liquidators D to bring to an end the abandoned project. It is not necessary to establish personal grievance against the liquidators. It is sufficient if it can be proved that the liquidation is not being handled so as to benefit the interest of the persons mainly interested in the winding up (*Re Adam Eyton, Limited Ex p Charlesworth* [1887] 36 Ch D 299; *In re Rubber And Produce Investment Trust* E [1915] 1 Ch D 382; *Re Keypak Homecare Ltd* [1987] BCLC 409).

[14] Second, learned counsel argued that the appellants have lost faith in the liquidators and this loss of faith is reasonable in the circumstances. The liquidators have given explanations to the specific complaints against them but they have failed to state what steps they intend to take to bring an end F to the liquidation process. The liquidators are expected to be efficient, vigorous and unbiased in their conduct and where the liquidators have not met this requirement the courts will have no hesitation in removing them (*AMP Enterprise Ltd v. Hoffman and anor* [2003] 1 BCLC 319).

G **[15]** The third point relates to the alleged delay of six years for the calling of the creditors' meeting after the winding up order. Learned counsel argued that whilst the learned judge may be right in her interpretation that the relevant rules only applies to the official receiver, the learned judge ought to have considered the delay as detrimental to the appellants and that it was justified grievance and that the liquidators had been guilty of complacency, H failure to exercise judgment, lack of vigour and a misconceived attitude (*AMP Enterprise Ltd* (*supra*)).

[16] The fourth and final point is that the learned judge did not direct her mind to the question of fiduciary duties and the breach of those fiduciary duties. The nature of the relationship of the liquidators with the appellants I is of a fiduciary nature (*Bristol and West Building Society v. Mothew* [1998] Ch 1). There was insufficient judicial appreciation of the evidence on the issue of the liquidators' conduct with regards to their duties as set out in the

appellants' affidavits. The learned judge failed to scrutinise the liquidators' evidence with care and treated it with suspicion (*Lee Ing Chin & Ors v. Gan Yook Chin & Anor* [2003] 2 CLJ 19; [2003] 2 MLJ 97; *Gan Yook Chin & Anor v. Lee Ing Chin & Ors* [2004] 4 CLJ 309; [2005] 2 MLJ 1).

[17] In reply, learned counsel for the liquidators submitted that the findings of fact by the learned judge that the appellants have failed to discharge the burden of proving that there was just cause for removing the liquidators is justified. The grounds of decision of the learned judge demonstrated the process by which the learned judge had arrived at her decision. The learned judge had analysed the appellants' evidence, the relevant law and rules applicable and the arguments put forward by the appellants as well as the liquidators evidence in rebuttal in respect of the five grounds relied on by the appellants as showing just cause in order to make the findings of fact.

[18] Secondly, learned counsel argued that the learned judge correctly found that pursuant to s. 237(4) of the CA 1965, the liquidators had full discretion in exercising their powers under s. 236(2) of the CA 1965 and were under no duty to consult the appellants or to obtain their consent in administering the property of Jade Realty or to hold meetings to update the appellants on the progress of the liquidation unless the appellants requisitioned a meeting under s. 237(2) of the CA 1965 and passed a resolution under s. 237(1) or to entertain GCPG's request for information or explanation as GCPG was not a creditor or contributory.

[19] Thirdly, learned counsel added that the appellants failed to exhaust their statutory remedies under ss. 236(2), 237(2) and 279 of the CA 1965. The liquidators have acted in compliance with the statutory provisions including s. 236(2)(i) which only allows appointment of an agent to do any business the liquidator is unable to do himself. As such, the liquidators cannot delegate their duties in a power of attorney as contained in the salient points of the scheme proposed by GVPG in 2014 (*Goh Siew Koon @ Eng Sing Kuan & Ors v. Lim Jit Kim @ Lim Tian Jee & Ors* [2015] 1 LNS 1222).

[20] Learned counsel for the first respondent adopted *in toto* the submission of learned counsel for the liquidators.

The Law On Removal Of Liquidators In A Winding Up By The Court

[21] The removal of a court appointed liquidator in a winding up by the court is governed by s. 232(1) of the CA 1965 which reads as follows:

> A liquidator appointed by the Court may resign or **on cause shown** be removed by the Court. (emphasis added)

[22] The keywords in sub-s. 232(1) relating to the removal of a liquidator are "on cause shown." According to learned author Walter Woon in *Company Law* (2nd edn) at p. 706, cause may be shown when there is some unfitness of the person by reason of his personal character, or from his connection with other parties, or from circumstances in which he is mixed up.

[23] It is settled law that the court does not have an unfettered discretion as cause must be shown. The relevant principles of law applicable to an application to remove a liquidator are well set out by Ramly Ali J (now FCJ) in *Ng Yok Gee & Anor v. CTI Leather Sdn Bhd; Metro Brilliant Sdn Bhd & Ors (Interveners)* [2006] 3 CLJ 360; [2006] 7 MLJ 28, 37-38. *Ng Yok Gee* (*supra*) was affirmed by the Federal Court in *Wong Sin Fan & Ors v. Ng Peak Yam & Anor* [2013] 3 CLJ 17; [2013] 2 MLJ 629, 638).

[24] In most instances, the common grounds advanced to justify the court in removing a liquidator are (i) the liquidator's personal unfitness; and/or (ii) the liquidator's personal misconduct. Be that as it may, we do not think that the power of removal under sub-s. 232(1) is confined to that. The court has the power to remove a liquidator if the court is satisfied on the evidence that it is in the interest of the liquidation that he should be replaced; by that we mean all those who are interested in the company being liquidated (*Chua Boon Chin v. JM McCormack & Ors* [1978] 1 LNS 33; [1979] 2 MLJ 156 (High Court, Singapore) at p. 158 per D'Cotta J; *Re Adam Eyton, Limited Ex p Charlesworth* [1887] 36 Ch D 299, at pp. 303-304 per Cotton LJ). Indeed, it has been said that the measure of due cause is the substantial and real interest of the liquidation (*Re Adam Eyton Limited* (*supra*) at p. 306 per Lord Bowen).

Our Decision

[25] In our view, the primary issue in this appeal is the question of whether the findings of fact by the learned judge that the appellants have failed to discharge the burden of proving that there was just cause of removal of the liquidators is justified. Related to this issue is the question of whether the learned judge addressed the grievances of the appellants in the context of the delay and whether the delay was occasioned by the liquidators. In order to appreciate the arguments advanced by the parties, it is necessary to revisit the role of the liquidator.

[26] At the outset, it must be emphasised that the winding up order against Jade Realty was made by the court pursuant to a creditor's petition to liquidate Jade Realty because they believe it to be insolvent and incapable of paying its debts; this process is also known as compulsory winding up. Pursuant thereto, the liquidators were appointed by the court to liquidate the company in compulsory liquidation. In all cases, the end result of compulsory liquidation is the complete dissolution of the company. Under the CA 1965, once the affairs of the company have been fully wound up the name of the company will be stuck off the register of companies and pursuant to a *gazette* notification the company shall be dissolved (s. 308 of the CA 1965). Ultimately, the company ceases to exist as a corporate entity. In short, liquidation is a process by which a company's existence is brought to an end.

[27] In this sense, the liquidator's principal role is to wind up the business of the company, realise the assets to pay off the creditors and other dues. If the company be solvent, the liquidator is to pay the balance remaining to the

members and bring an end to the liquidation process. Put another way, a liquidator is the officer appointed by the court when a company goes into winding up who has the responsibility for collecting in all of the assets of the company and settling all claims against the company before putting the company in dissolution.

[28] In the discharge and performance of their statutory duties, the liquidators are required to exercise a high standard of care, skill, diligence and competence commensurate with their professional standing. The general duties of a liquidator appointed in a compulsory winding up was explained by Marks J in the Australian case of *Commissioner for Corporate Affairs v. Peter William Harvey* [1980] VR 669 in the following terms:

> The duties of a liquidator need to be clearly understood. Fundamentally, he must administer the estate strictly in accordance with the duties and obligations specifically imposed on him by the Companies Act and its Rules. It is obvious that everything to be done in a competent administration is not and cannot be specifically prescribed. Preserving the assets, giving proper attention to the administration, **acting with due despatch** and ensuring adequate knowledge and understanding of the affairs of the companies are matters of common sense. If there is a difficulty at any stage of the administration then it is the clear duty of the liquidator to inform the Court and take directions.
>
> In a compulsory winding up his office stems from appointment by the Court. He is clearly not an employee of the Court but the nature of the appointment makes him a representative of it. As Street J said in *Duffy v. Super Centre Development Corp Ltd* [1967] 1 NSWR 382 at 383, the decisions the liquidator makes from time-to-time are in effect made under the authority of the Court itself. The winding up is by the Court, which for the purposes the liquidator is. As such he is entrusted with the reputation of the Court for **impartial and proper despatch of duties**. No lesser standard in that regard is to be expected of the liquidator than of a court of a judge.
>
> When a winding up occurs, the financial outcome for creditors and contributories is dependent, amongst other things, on honest administration. It is the trust, which those persons are obliged to place in the liquidator to preserve the assets and act faithfully and fairly that defines the weight of the duties owed and the strictness with which his conduct must be considered by the Court.
>
> The law in the circumstances regards such duties as fiduciary, although clearly it will not interfere with *bona fide* exercise of discretion which are not beyond the acts or omissions of a reasonable person. (emphasis supplied)

[29] It has, therefore, been recognised that in the discharge of their duties, the liquidator must act impartially and with due and proper despatch; ie to say he must transact or dispose of the liquidation process promptly or expeditiously or as soon as practicable. In *Re Keypak Homecare Ltd* [1987]

BCLC 409, the liquidator was removed by the court because he had failed to display sufficient vigour in carrying out his duties as liquidator, and in particular, although he had been in office for three months he had failed to conduct a thorough investigation of the company's affairs. In that case, the liquidator had made no examination of the sale and purchase ledgers, had not investigated whether stock was missing, had made no inquiries of NB Ltd (a company which was operating from the company's premises, with substantially the same directors and staff, using the same vehicles and selling the company's stock) and had not interviewed the employees of the company to determine exactly what happened in the weeks before the company ceased to trade.

[30] In order to enable the liquidators to wind up the affairs of the company the liquidators are given extensive powers under s. 236 of the CA 1965. However, the exercise of the liquidators' powers is subject to the control of the court (sub-s. 236(3) of the CA 1965). The liquidators are also required to have regard to any directions given by resolution of the creditors or contributories at any general meeting (s. 237 of the CA 1965).

[31] On the totality of the evidence as presented in the affidavits filed in the proceedings, we are inclined to agree with the appellants' submission that the learned judge did not appear to have addressed the grievances of the appellants in the context of the delay occasioned by the liquidators. Whilst appreciating that the liquidation process was not completed for eight years, the learned judge nevertheless found that the delay was justified. In her judgment, the learned judge said that GVPG took five years from 2008 to 2013 with the consent of the petitioner to try to rehabilitate the project with three different white knights. The learned judge also found that when the liquidators had the mandate of the petitioner to revive the project and in December 2013, a meeting was held to discuss the s. 176 scheme with the purchasers. But then GVPG tried another white knight in 2014 and in June 2014 filed the application at the High Court for the removal of the liquidators. The learned judge held that due to the aforesaid the liquidators could not proceed as they have to await the decision of the court.

[32] It is not necessary to reproduce all the facts relating to the events which transpired between 2007 and 2014. Suffice to say that between April 2008 and July 2010, at GVPG's request the liquidators embarked on a scheme to rehabilitate 206 bungalow lots and to procure individual titles which failed. Meanwhile, the liquidators entered into sale and purchase agreements to sell the charged land less 627 bungalows plots to KPSB; two of the sale and purchase agreements with KPSB were subsequently terminated after three white knight were proposed by GCPG to purchase part of the charged land between July 2010 and September 2012. In January 2013, the liquidators announced that they will carry out rehabilitation works of the abandoned project. In February 2013, the liquidators rejected the proposals of the fourth white knight and the liquidators informed GVPG that

they would rehabilitate the project. In March 2013, the liquidators submitted their rehabilitation proposal to the State Government. In October 2013, the liquidators raised funds in an attempt to settle the outstanding balance of premium for phases 1, 2 and 3 but the payment was rejected. In October 2013, preparatory work was commenced by the liquidators for an application to convert the land use from agriculture to residential and for subdivision of master title for phases 2A and 2B.

[33] It is discernible from the aforesaid account of the brief facts that the liquidators have deviated from their primary duty – to wind up the business of Jade Realty. Instead, they went into the business of attempting to revive the abandoned project over a period of eight years. We do not think that it is the business of the liquidators in compulsory winding up to engage in activities which runs counter to the objective of winding up the affairs of the company leading to its ultimate dissolution.

[34] Consequently, after a lapse of eight years, the liquidators still have not been able to complete the compulsory liquidation. We are not persuaded that the liquidators acted with due despatch or with sufficient vigour expected of a court-appointed liquidator in compulsory winding up. The process of liquidation must be carried out by the liquidators with due despatch and diligence. The liquidators ought to have applied to the court for directions in relation to matters which came up during the winding up.

[35] In all the circumstances, the lapse of eight years in compulsory liquidation is inordinate and unreasonable. Consequently, we are constrained to hold that it is in the interest of the liquidation and all those who are interested in the company being liquidated that the liquidators be forthwith removed and a new liquidator be appointed to carry out the duties as provided under the CA 1965.

[36] For the foregoing reasons, we allowed the appeal with costs to be paid by the liquidators personally. Consequently, we granted an order in terms of prayers 1 to 7 and 9 of the appellants' summons in chambers